IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8286 of 2004

to

SPECIAL CIVIL APPLICATIONNo 8298 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

DINESHBHAI A. TANK & OTHERS

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Appearance:

1. Special Civil Application No. 8286 to 8298 of 2004
MR MUKESH PATEL, ASSTT.GOVERNMENT PLEADER for Petitioner
MR PANKAJ R DESAI for Respondent in each petition.

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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 25/08/2004

COMMON ORAL JUDGEMENT

Rule. Mr. Pankaj R. Desai, learned Advocate appearing for the respondent in each petition waives service of notice of rule. At the request of learned Counsel for the parties, this group of petitions are taken up for final disposal today.

2. In this group of petitions, the legality and validity of a common award dated 18.10.2003 is challenged, by which the Labour Court, Jamnagar, was pleased to allow partially the References raised by the respective respondent in each of these petitions.

2.1 It was the case of the workmen before the Labour Court that they were discharging duties as Ward servants and Aayas since periods ranging from 5 years to 9 years. It was also the case of the workmen that on different dates in the month of April, 2000, their services came to be terminated by the employer without following any procedure prescribed under the law. It was the case of the workmen that they had worked for more than 240 days in the 12 calendar months preceding the date of termination and their terminations were also in violation of Section 25H of the Industrial Disputes Act, besides being contrary to Section 25F of the Industrial Disputes Act.

3. Before the Labour Court, no serious dispute was raised by the present petitioner with regard to the issue that the workmen were working since 1993 - 94 and there abouts. Thus, with respect to the averment that the workmen were employed since number of years were not seriously in doubt.

4. The Labour Court, on the basis of the evidence on record, had come to the conclusion that the deponent Natwarbhai Bhagwandas Joshi, who had given his evidence at Exhibit 19 on behalf of the employer, had in fact supported the version of the workmen that they are working since a long period. The said witness in his cross-examination had stated that the workmen were being paid for the number of days they had actually worked for which the record is maintained by the employer. The witness had also agreed to produce the attendance register and wage register. Despite this statement of

the witness, no such documents were produced before the Labour Court. The Labour Court therefore, recorded that though the workmen had called upon the employer to produce the attendance register and wage register, the same were not produced. This coupled with the statement of the witness Natvarbhai Bhagwandas Joshi deposed for the employer that the workmen have been working since a long period of time, prompted the Labour Court to form an opinion that the statement of the workmen that they have worked for more than 240 days during the 12 calendar months preceding their termination is required to be accepted. In view of this factual finding and in view of the undisputed position that before terminating the services of the workmen, the petitioner had not complied with any of the requirements of Section 25F of the Industrial Disputes Act, the Labour Court was pleased to record that the termination of the workmen is in violation of Section 25F of the Industrial Disputes Act. The Labour Court also found that the averments of the workmen that at the time of their termination persons junior to them were retained in service has not been dispelled by the employer by producing their seniority list. In view of this, the Labour Court was pleased to come to the conclusion that the termination of the workmen was also in violation of the provisions of Section 25G of the Industrial Disputes Act. The Labour Court also noted that after the termination of the workmen, they have not been recalled for engagement at the time when other employees were recruited. The Labour Court therefore, found that the petitioner had also breached provisions of Section 25H of the Industrial Disputes Act.

5. On the basis of the said findings, the Labour Court was pleased to set aside the termination of the workmen, except in case of Nitin Babulal - applicant of Reference 266 of 2000, who has expired on 11.6.2002. With respect to the rest of the workmen, the Labour Court directed their reinstatement with continuity of service, however, with 50% backwages. With respect to the deceased workman Nitin Babulal, it was directed that his heir and legal representative i.e. his mother Bachuben Shantibhai be paid a lumpsum amount of Rs. 25,000/-.

6. I find that the factual findings arrived at by the Labour Court are based on evidence on record. The witness who was examined by the employer at Ex.19 has agreed that the workmen were working since number of years. The witness was also called upon to produce the attendance register and wage register, which the witness agreed that the employer maintains. Despite this

statement and despite the workmen calling upon the witness to produce such documents, no such documents were produced on record. In that view of the matter, the Labour Court was perfectly justified in coming to the conclusion that the averment of the workmen that they had worked for more than 240 days during the 12 months prior to the date of termination should be accepted, is quite justified.

7. The learned Counsel for the petitioner Shri Mukesh Patel submitted that the petitioner had acted in terms of Circulars dated 7.6.1991 and 8.1.2002, by which the workmen were not entitled to be continued in service or be recalled since they did not fulfil the conditions obtaining in the said Circulars. Without expressing any opinion on the question of the workmen fulfilling the terms and conditions under the Circulars or not, suffice it to say that no Circular can be utilised to circumvent the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act, especially when no provision has been pointed in the Circular permitting such an action and therefore, the Labour Court's finding cannot be faulted with. The Labour Court had also, on the basis of material produced on record, come to a definite finding of fact that the petitioner had also breached provisions of Sections 25H and 25G of the Industrial Disputes Act. Here also I find that the conclusions are justified on the basis of the evidence on record. In exercise of powers under Article 226/227 of the Constitution of India, this Court cannot reappreciate the evidence and come to a different conclusion from that arrived at by the Labour Court, and unless the findings of fact are perverse, interference would not be justified. Since no perversity is pointed out in the findings of fact arrived at by the Labour Court, the only conclusion possible is that the petitioner had violated the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act while terminating the services of each respondent.

8. With respect to the backwages, considering the fact that the respondent workmen were working as badali workers and also taking into account the concession made by the learned Advocate for the respondents, it is observed that the respondents (except respondent in Special Civil Application No. 8298 of 2004), will be entitled to 25% of the backwages for the intervening period, and the direction of the Labour Court with respect to the backwages will therefore be accordingly modified to that extent.

9. In the result, the petitions are partially

allowed. The award of the Labour Court in so far as the termination of the respondent workmen in each of the petitions is concerned, is upheld. With respect to the direction for payment of backwages, the same shall stand modified by providing that the respective workmen will be entitled to 25% of the backwages instead of 50% as directed by the Labour Court. Rule is made absolute to the above extent in each matter except in Special Civil Application No. 8298 of 2004.

10. With respect to Special Civil Application No. 8298 of 2004, in which the workman had expired during the pendency of the proceedings before the Labour Court, no interference is called for and the same is rejected and rule is discharged accordingly.

Direct service permitted.

(Akil Kureshi, J.)

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